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SENATE BILL 865

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO PUBLIC INVESTMENTS; INCREASING THE INVESTMENTS OF
THE SEVERANCE TAX PERMANENT FUND IN PRIVATE EQUITY FUNDS FROM
SIX TO NINE PERCENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990,
Chapter 126, Section 5, as amended) is amended to read:

"7-27-5.15. NEW MEXICO PRIVATE EQUITY FUNDS AND BUSINESS
INVESTMENTS. --

A. No more than ~~[six]~~ nine percent of the market
value of the severance tax permanent fund may be invested in
New Mexico private equity funds or New Mexico businesses under
this section.

B. In making investments pursuant to Subsection A
of this section, the council shall make investments in New

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1 Mexico private equity funds or New Mexico businesses whose
2 investments or enterprises enhance the economic development
3 objectives of the state.

4 C. The state investment officer shall make
5 investments pursuant to Subsection A of this section only upon
6 approval of the council, upon review of the recommendation of
7 the private equity investment advisory committee and within
8 guidelines and policies established by the council.

9 D. As used in this section:

10 (1) "New Mexico business" means, in the case
11 of a corporation or limited liability company, a business with
12 its principal office and a majority of its full-time employees
13 located in New Mexico or, in the case of a limited
14 partnership, a business with its principal place of business
15 and eighty percent of its assets located in New Mexico; and

16 (2) "New Mexico private equity fund" means a
17 limited partnership, limited liability company or corporation
18 organized and operating in the United States and maintaining
19 an office staffed by a full-time investment officer in New
20 Mexico that:

21 (a) has as its primary business
22 activity the investment of funds in return for equity in or
23 debt of businesses for the purpose of providing capital for
24 start-up, expansion, product or market development,
25 recapitalization or similar business purposes;

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1 (b) holds out the prospects for capital
2 appreciation from such investments;

3 (c) has at least one full-time manager
4 with at least three years of professional experience in
5 assessing the growth prospects of businesses or evaluating
6 business plans and who has established permanent residency in
7 the state;

8 (d) is committed to investing or helps
9 secure investing by others, in an amount at least equal to the
10 total investment made by the state investment officer in that
11 fund pursuant to this section, in businesses with a principal
12 place of business in the state and that hold promise for
13 attracting additional capital from individual or institutional
14 investors nationwide for businesses in the state; and

15 (e) accepts investments only from
16 accredited investors as that term is defined in Section 2 of
17 the federal Securities Act of 1933, as amended (15 USCA
18 Section 77(b)), and rules and regulations promulgated pursuant
19 to that section.

20 E. The state investment officer is authorized to
21 make investments in New Mexico businesses to create new job
22 opportunities and to support new, emerging or expanding
23 businesses in a manner consistent with the constitution of New
24 Mexico if:

25 (1) the investments are made:

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1 (a) in conjunction with cooperative
2 investment agreements with parties that have demonstrated
3 abilities and relationships in making investments in new,
4 emerging or expanding businesses; or

5 (b) in New Mexico aerospace businesses
6 that have received an award from the United States government
7 or one of its agencies or instrumentalities: 1) in an amount,
8 not less than one hundred million dollars (\$100,000,000), that
9 is equal to at least ten times the investment from the
10 severance tax permanent fund; and 2) for the purpose of
11 stimulating commercial enterprises;

12 (2) an investment in any one business does
13 not exceed ten percent of the amount available for investment
14 pursuant to this section; and

15 (3) the investments represent no more than
16 fifty-one percent of the total investment capital in a
17 business; provided, however, that nothing in this subsection
18 prohibits the ownership of more than fifty-one percent of the
19 total investment capital in a New Mexico business if the
20 additional ownership interest:

21 (a) is due to foreclosure or other
22 action by the state investment officer pursuant to agreements
23 with the business or other investors in that business;

24 (b) is necessary to protect the
25 investment; and

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1 (c) does not require an additional
2 investment of the severance tax permanent fund.

3 F. The state investment officer shall make a
4 commitment to the small business investment corporation
5 pursuant to the Small Business Investment Act to invest three-
6 fourths percent of the market value of the severance tax
7 permanent fund to create new job opportunities by providing
8 capital for land, buildings or infrastructure for facilities
9 to support new or expanding businesses and to otherwise make
10 investments to create new job opportunities to support new or
11 expanding businesses in a manner consistent with the
12 constitution of New Mexico. On July 1 of each year, the state
13 investment officer shall determine whether the invested
14 capital in the small business investment corporation is less
15 than three-fourths percent of the market value of the
16 severance tax permanent fund. If the invested capital in the
17 small business investment corporation equals less than three-
18 fourths percent of the market value of the severance tax
19 permanent fund, further commitments shall be made until the
20 invested capital is equal to three-fourths percent of the
21 market value of the fund.

22 G. The state investment officer shall report
23 semiannually on the New Mexico private equity investments made
24 pursuant to this section. Annually, a report shall be
25 submitted to the legislature prior to the beginning of each

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1 regular legislative session and a second report no later than
2 October 1 each year to the legislative finance committee, the
3 revenue stabilization and tax policy committee and any other
4 appropriate interim committee. Each report shall provide the
5 amounts invested in each New Mexico private equity fund, as
6 well as information about the objectives of the funds, the
7 companies in which each fund is invested and how each
8 investment enhances the economic development objectives of the
9 state. Each report shall provide the amounts invested in each
10 New Mexico business. "

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